

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA 112-RECLAS, FRL-     ]

Clean Air Act Reclassification, San Joaquin Valley Nonattainment  
Area; California; Ozone

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Rule.

**SUMMARY:** EPA is taking final action to grant a request by the State of California to voluntarily reclassify under the Clean Air Act ("CAA" or "the Act") the San Joaquin Valley Ozone Nonattainment Area ("San Joaquin Valley Air Basin" or "SJVAB") from a severe to an extreme 1-hour ozone nonattainment area.

We are also taking final action to require the State to submit by November 15, 2004 an extreme area ozone plan for the areas within the SJVAB under the State's jurisdiction that provides for the attainment of the ozone National Ambient Air Quality Standard ("NAAQS") as expeditiously as practicable, but no later than November 15, 2010. This plan must meet the specific provisions of CAA section 182(e). The State must also submit within 12 months of the effective date of this rule, revised Title V and New Source Review rules that reflect the extreme area statutory requirements.

Once effective, this reclassification of the SJVAB terminates the federal offset sanction that was imposed on March 18, 2004 and also terminates the highway sanction and federal implementation plan clocks. The sanction and FIP clocks were started under CAA section 179(a) upon EPA's 2002 finding that the State failed to submit the statutorily required severe area attainment demonstration for the area.

**EFFECTIVE DATE:** This rule is effective on [Insert date 30 days after the date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. CA 112-RECLAS. Docket materials are available in hard copy at EPA's Region IX office during normal business hours by appointment. The address is U.S. EPA Region IX - Air Division, 75 Hawthorne Street, San Francisco, CA 94105-3901. This Regional Office is open from 8 am to 5 pm, Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:**

David Wampler, EPA Region IX, Air Division (AIR-3), 75 Hawthorne Street, San Francisco, CA, 94105; telephone: (415) 972-3975; fax: (415) 947-3579; e-mail: wampler.david@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

## **I. Proposed Action**

On February 23, 2004 (69 FR 8126), EPA proposed to grant a request by the State of California to voluntarily reclassify under Clean Air Act ("CAA") section 181(b)(3), the San Joaquin Valley Ozone Nonattainment Area ("San Joaquin Valley Air Basin" or "SJVAB") from a severe to an extreme nonattainment area for the 1-hour ozone standard.<sup>1,2</sup> In addition, we proposed that the State submit, by no later than October 1, 2004, an extreme area plan addressing the requirements of CAA section 182(e) and that the State submit revised New Source Review rules and Title V program revisions for the areas within the District's jurisdiction within 12 months from the effective date of the final reclassification.

There are several Indian reservations located within the SJVAB. In our proposed action, we noted that states typically

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<sup>1</sup> Letter from Catherine Witherspoon, Executive Officer, California Air Resources Board ("CARB"), to Mr. Wayne Nastri, Regional Administrator, EPA Region IX, dated January 9, 2004. In the letter, CARB transmits to EPA and endorses San Joaquin Valley Unified Air Pollution Control District ("District") Resolution No. 03-12-10 requesting the reclassification.

<sup>2</sup> In the very near future, EPA expects to issue new regulations to implement the 8-hour ozone standard. At that time we will be able to fully evaluate how the transition to the 8-hour standard will impact existing requirements to implement the 1-hour ozone standard.

have no jurisdiction under the CAA in Indian country and that California has not been approved by EPA to administer any CAA programs in Indian country. We also stated that, as a matter of EPA's federal implementation of relevant provisions of the CAA over Indian country within the SJVAB, we believe these areas of Indian country should be reclassified to extreme. We contacted all seven tribes with reservations located within the SJVAB to inform them that we intend to include their reservations in the reclassification and to provide the tribes the opportunity for consultation. None of the seven tribes we contacted requested consultation or submitted comments on our proposed action.

## **II. Public Comments and EPA Responses**

EPA's proposed action provided a 30-day public comment period. During this period, we received three comment letters<sup>3</sup>. Our response immediately follows our summary of each comment letter.

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<sup>3</sup>On April 5, 2004, EPA received an additional comment letter from ChevronTexaco dated March 25, 2004 and postmarked April 1. Although that letter is outside the comment period, EPA has decided to include it in the docket for this rule. ChevronTexaco makes the same comment as the Western States Petroleum Association ("WSPA") (discussed below) regarding additional time for the District to submit required SIP revisions and the extreme area plan.

**COMMENT #1:** On behalf of the Association of Irrigated Residents ("AIR"), The Center on Race Poverty and The Environment requested that EPA approve the State's reclassification request with a contingency that would allow us to rescind the extreme classification and revert the SJVAB to a severe nonattainment area if the California State Court of Appeal invalidates the District Board resolution requesting the reclassification (#03-12-10, December 18, 2003), or otherwise holds that the District violated State procedural law when it adopted the resolution. AIR added that the contingency should also restart any pending sanctions and FIP clocks and re-apply sanctions already in place. To justify their request, AIR cited their anticipated appeal of the State Superior Court decision<sup>4</sup>.

**EPA RESPONSE TO COMMENT #1:** EPA does not believe it is necessary to attach the contingency requested by AIR to the final reclassification of the SJVAB to extreme. In this instance, EPA is granting the January 9, 2004 request of the State under CAA section 181(b)(3) for a voluntary reclassification. In the event that the State Court of Appeal overturns the March 22, 2004 Kern County Superior Court's decision and invalidates the District

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<sup>4</sup>On March 22, 2004 the Kern County Superior Court denied AIR's Petition for Writ of Mandate and Complaint for Declaratory Relief in *Association of Irrigated Residents v. San Joaquin Valley Unified APCD*, Case No. S-1500-CV 252128 KCT.

Board's December 2003 resolution, State law would determine what effect, if any, such a result would have on the State's reclassification request. EPA, in consultation with CARB, will evaluate the impact of any State appellate decision on the reclassification and the pre-existing sanctions clocks and take any appropriate action, including rescission. Moreover, under the Administrative Procedure Act, any interested person can petition EPA for the repeal of any rule. 5 U.S.C. section 553(e).

**COMMENT #2:** The District asked that the submittal date for the 1-hour extreme area ozone plan be delayed 45 days from the October 1, 2004 date we proposed to a new date of November 15, 2004.<sup>5</sup>

The District cited two reasons for needing additional time to submit the extreme area plan. First, the District stated that continued model performance concerns for Central California Ozone Study ("CCOS") ozone episodes have delayed the availability of reliable model runs predicting year 2010 ozone levels for the San Joaquin Valley Air Basin. Second, the District said they needed additional time to conduct their environmental review of the

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<sup>5</sup> The District also stated that they could meet our proposed schedule that they submit, through CARB, necessary revisions to their Title V and NSR rules within 12 months from the effective date of the final rule.

plan under the California Environmental Quality Act ("CEQA").

While the District acknowledged uncertainty about the extent of the CEQA review, they stated that the timing of the CEQA approval must be dovetailed with the plan adoption which would most likely occur in August or September 2004, with CARB approval in October 2004.

**EPA RESPONSE TO COMMENT #2:** EPA understands from the District's comment letter that the concerns regarding the modeling runs were resolved during the week of March 22, 2004 and that, as a result, the requested November 15, 2004 submittal deadline can be met. We also acknowledge the desirability for the CEQA review and the plan adoption to be coordinated. Therefore, we believe that the additional 45 days sought by the District for submittal of the extreme area plan to EPA is warranted.

**COMMENT #3:** WSPA supported the reclassification request and our determination that the current sanction and FIP clocks, based on requirements for severe ozone nonattainment areas, will stop upon the effective date of the reclassification. WSPA, however, questioned our proposed schedules for submission of the extreme area ozone plan and revised NSR and Title V rules and stated that the schedules did not provide adequate time for preparation and

adoption of the plan and amended rules. Instead of the schedules we proposed, WSPA requested that EPA establish one deadline for all required submittals and that the deadline be 18 months from the effective date of the final rule.

WSPA stated more time is necessary because EPA's proposed deadline does not allow sufficient time for the District to rely on the best possible information in completing the plan development and adoption process. WSPA cited existing performance problems associated with ozone episodes assessed in the CCOS program and concerns regarding the emissions inventory.

WSPA also requested that the same 18-month submittal date for the plan be established for the necessary NSR and Title V rule revisions. WSPA claimed that it was appropriate to set the deadline 18 months from the effective date of the rule because doing so would: 1) be consistent with the suggested timeline for the extreme area plan submittal; and 2) help assure the District is not saddled with unnecessarily stringent federal NSR and Title V applicability provisions if the extreme area requirements would not apply in the District under EPA's final rule for transition to the 8-hour ozone standard.

**EPA RESPONSE TO COMMENT #3:** EPA appreciates WSPA's support of the reclassification and we acknowledge their request that we



require the extreme area plan and the NSR and Title V revisions be submitted 18 months from the effective date of the rule. As discussed below, however, we do not believe that the additional time is warranted.

First, regarding the plan submittal, WSPA's request for the full 18 months is not warranted in this case because the District has been working on the extreme area plan since 2002 and has indicated that they can meet the November 15, 2004 deadline. EPA believes that development of the plan should not be slowed or delayed any further than absolutely necessary and should remain a priority for all involved agencies. Thus, although we are not granting the full 18 months as requested by WSPA, we do believe, based on the District's comments above, that the 45 additional days requested by the District to submit the attainment demonstration are warranted.

In response to WSPA's request to extend the due date for the NSR and Title V rule revisions, we do not believe that an additional 6 months is necessary. Again, we are not granting WSPA's request because the District has indicated that they can meet a deadline of 12 months from the effective date of the reclassification.

Regarding WSPA's comment that additional data analysis is needed to confirm possible performance problems associated with the CCOS program, we recognize that CCOS data may not have advanced at the pace we had expected, but EPA does not believe this should prevent the State and District from moving forward with the attainment demonstration for the SJVAB.

### **III. Consequences of Reclassification**

*A. Extreme Area Plan Requirements.* Under CAA section 182(e), extreme area plans are required to meet all the requirements for severe area plans<sup>6</sup> plus the requirements for extreme areas, including, but not limited to: (1) a 10 ton per year major source definition; (2) additional reasonably available control technology (RACT) rules for sources subject to the new lower major source cutoff; (3) a new source review offset requirement of at least 1.5 to 1; (4) a rate of progress demonstration of emission reductions of ozone precursors of at least 3 percent per year from 2005 until the attainment date;<sup>7</sup> (5) clean fuels for

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<sup>6</sup>The CAA specifically excludes certain severe area requirements from the extreme area requirements, e.g., section 182(c)(6), (7) and (8).

<sup>7</sup> The CAA does not allow the state to use the provision at CAA Section 182(c)(2)(B)(ii) that would allow the state to demonstrate to the satisfaction of the Administrator that less than 3 percent reduction per year is approvable if the plan reflecting such lesser amount includes all measures that can

boilers as required for at CAA section 182(e)(3); and contingency measures. The plan must address the general nonattainment plan requirements in CAA section 172(c). The extreme area plan for the SJVAB must also contain adopted regulations and may also contain enforceable commitments to the extent consistent with Agency guidance, sufficient to make the required rate of progress and to attain the 1-hour ozone NAAQS as expeditiously as practicable but no later than November 15, 2010. The new attainment demonstration should be based on the best information available.

*B. NSR and Title V Program Revisions.*

In addition to the required plan revisions discussed above, the District must revise its NSR rule to reflect the extreme area definitions for major new sources and major modifications and to increase the offset ratio for these sources from the ratio for severe areas in CAA section 182(d)(2) to 1.5 to 1. CAA section 182(e)(1) and (2). The District must also make any changes in its Title V operating permits program necessary to reflect the change in the threshold from 25 tpy for severe areas to 10 tpy for extreme areas.

*C. Sanctions and FIP*

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feasibly be implemented in the area.

For the reasons stated in our proposed rule, upon the effective date of today's final action, the federal offset sanction that was imposed on March 18, 2004 pursuant to CAA section 179(a) will be terminated. In addition, our action terminates the highway sanction and FIP clocks. These sanction and FIP clocks were started as a result of the Agency's October 2, 2002 finding that the State failed to submit the severe area attainment demonstration.

#### **IV. EPA Action**

After fully considering all comments received on the proposed rule, EPA is taking final action to grant the State of California's request to voluntarily reclassify the SJVAB from a severe to an extreme 1-hour ozone nonattainment area. We are also taking final action to require the State to submit by November 15, 2004, an extreme area ozone plan for the areas within the SJVAB under the State's jurisdiction that provides for the attainment of the ozone NAAQS as expeditiously as practicable, but no later than November 15, 2010. This plan must meet, among other general provisions of the CAA, the specific provisions of section 182(e), portions of which are discussed above. The State must also submit by [insert date 1 year plus 30 days after publication in the Federal Register], revised Title V

and New Source Review rules that reflect the extreme area requirements.

## **V. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. EPA has determined that the voluntary reclassification would not result in any of the effects identified in Executive Order 12866 sec. 3(f). Voluntary reclassifications under section 181(b)(3) of the CAA are based solely upon requests by the State and EPA is required under the CAA to grant them. These actions do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications, reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

For the aforementioned reasons, this action is also not subject to Executive Order 32111, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"

(66 FR 28355, May 22, 2001). Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). These actions do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) for the following reasons: EPA is required to grant requests by states for voluntary reclassifications and such reclassifications in and of themselves do not impose any federal intergovernmental mandate. Several Indian tribes have reservations located within the boundaries of the SJVAB. EPA is responsible for the implementation of federal Clean Air Act programs in Indian country, including reclassifications. At the time of our proposed action, EPA notified all the affected tribal officials, and provided each the opportunity for consultation on a government-to-government basis, as provided for by Executive Order 13175 (65 FR 67249, November 9, 2000). None of the tribes we contacted requested consultation or submitted comments on our proposed action.

Because EPA is required to grant requests by states for voluntary reclassifications and such reclassifications in and of themselves do not impose any federal intergovernmental mandate,

this rule also does not have Federalism implications as it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). For these same reasons, this rule also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). These actions are also not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because they are not economically significant.

As discussed above, a voluntary reclassification under section 181(b)(3) of the CAA is based solely on the request of a state and EPA is required to grant such a request. In this context, it would thus be inconsistent with applicable law for EPA, when it grants a state's request for a voluntary reclassification to use voluntary consensus standards. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not



affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

**List of Subjects in 40 CFR part 81:**

Environmental protection, Air pollution control,  
Hydrocarbons, Intergovernmental relations, National parks,  
Nitrogen oxides, Ozone, Volatile organic compounds, Wilderness  
areas.

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Dated:

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Laura Yoshii,  
Acting Regional Administrator,  
Region IX.

Part 81 of chapter I, title 40 of the Code of Federal Regulations  
is amended as follows:

**PART 81--[AMENDED]**

1. The authority citation for part 81 continues to read as  
follows:

Authority: 42 U.S.C. 7401 et seq.

2. In §81.305 the "California-Ozone (1-Hour Standard)" table  
is amended by revising the entry for "San Joaquin Valley Area:"  
to read as follows:

§81.305 California.

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California--Ozone

[1-Hour Standard]

Designated Area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type

* * *	*	*	*	*
San Joaquin Valley Area:				
Fresno County	11/15/90	Nonattainment	<u>[Date 30 days after date of publication]</u>	Extreme
Kern County (part)				
That portion of Kern County that lies west and north of a line described below:	11/15/90	Nonattainment	<u>[Date 30 days after date of publication]</u>	Extreme
Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Pliebre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary.				
Kings County	11/15/90	Nonattainment	<u>[Date 30 days after date of publication]</u>	Extreme
Madera County	11/15/90	Nonattainment	<u>[Date 30 days after date of publication]</u>	Extreme
Merced County	11/15/90	Nonattainment	<u>[Date 30 days after date of publication]</u>	Extreme

San Joaquin County	11/15/90	Nonattainment	<u>[Date 30 days after date of publication]</u>	Extreme
Stanislaus County	11/15/90	Nonattainment	<u>[Date 30 days after date of publication]</u>	Extreme
Tulare County	11/15/90	Nonattainment	<u>[Date 30 days after date of publication]</u>	Extreme
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